

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JEREMY SETTLES,

Petitioner,

vs.

ROBERT LEGRAND, et al.,

Respondents.

Case No. 3:10-cv-00779-RCJ-VPC

**ORDER**

Before the court are the second amended petition for a writ of habeas corpus (#9), respondents' answer (#32), and petitioner's reply (#34). The court finds that relief is not warranted, and the court denies the second amended petition.

In state district court, petitioner agreed to plead guilty to one count of attempted lewdness with a child under the age of 14. Ex. 5 (#16).<sup>1</sup> The plea agreement informed petitioner that he would be sentenced to lifetime supervision in addition to any other penalties provided by law. Id. at 2 (#16). The judgment of conviction was entered on April 18, 2008. Ex. 6 (#16). The state court sentenced petitioner to prison for a maximum term of 240 months and a minimum term of 96 months, and the state court also imposed a special sentence of lifetime supervision. Id. Petitioner did not appeal. On March 25, 2009, petitioner filed in state district court a post-conviction habeas corpus petition. Ex. 7 (#16). The state district court first denied the petition because it was not verified. Ex. 9 (#16). Petitioner appealed. The Nevada Supreme Court reversed and remanded to

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<sup>1</sup>Unless stated otherwise, the exhibits cited were filed in support of respondents' motion to dismiss (#15).

1 give petitioner an opportunity to correct the defect. Ex. 10 (#16). Petitioner then filed a petition  
 2 and memorandum with the verification. Ex. 11 (#16). The state district court denied the petition on  
 3 March 4, 2010. Ex. 14 (#16). Petitioner appealed. The Nevada Supreme Court affirmed. Ex. 16  
 4 (#16).

5 Petitioner then commenced this action. The second amended petition (#9) is the operative  
 6 petition. Respondents filed a motion to dismiss (#15). The court adopted respondents' division of  
 7 petitioner's grounds for relief into sub-grounds. For various reasons, grounds 1(d), 1(f), 1(g), 4(a),  
 8 4(b), 6(a), 6(b), 6(c), 6(d), 6(e), 6(f) have been dismissed.

9 Congress has limited the circumstances in which a federal court can grant relief to a  
 10 petitioner who is in custody pursuant to a judgment of conviction of a state court.

11 An application for a writ of habeas corpus on behalf of a person in custody pursuant to the  
 12 judgment of a State court shall not be granted with respect to any claim that was adjudicated  
 on the merits in State court proceedings unless the adjudication of the claim—

13 (1) resulted in a decision that was contrary to, or involved an unreasonable application of,  
 14 clearly established Federal law, as determined by the Supreme Court of the United States; or

15 (2) resulted in a decision that was based on an unreasonable determination of the facts in  
 light of the evidence presented in the State court proceeding.

16 28 U.S.C. § 2254(d). “By its terms § 2254(d) bars relitigation of any claim ‘adjudicated on the  
 17 merits’ in state court, subject only to the exceptions in §§ 2254(d)(1) and (d)(2).” Harrington v.  
 18 Richter, 131 S. Ct. 770, 784 (2011).

19 Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is shown  
 20 that the earlier state court's decision “was contrary to” federal law then clearly established in  
 the holdings of this Court, § 2254(d)(1); Williams v. Taylor, 529 U.S. 362, 412 (2000); or  
 21 that it “involved an unreasonable application of” such law, § 2254(d)(1); or that it “was  
 based on an unreasonable determination of the facts” in light of the record before the state  
 22 court, § 2254(d)(2).

23 Richter, 131 S. Ct. at 785. “For purposes of § 2254(d)(1), ‘an unreasonable application of federal  
 24 law is different from an incorrect application of federal law.’” Id. (citation omitted). “A state  
 25 court's determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded  
 26 jurists could disagree’ on the correctness of the state court's decision.” Id. (citation omitted).

27 [E]valuating whether a rule application was unreasonable requires considering the rule's  
 28 specificity. The more general the rule, the more leeway courts have in reaching outcomes in  
 case-by-case determinations.

1 Yarborough v. Alvarado, 541 U.S. 652, 664 (2004).

2 Under § 2254(d), a habeas court must determine what arguments or theories supported or, as  
3 here, could have supported, the state court's decision; and then it must ask whether it is  
4 possible fairminded jurists could disagree that those arguments or theories are inconsistent  
5 with the holding in a prior decision of this Court.

5 Richter, 131 S. Ct. at 786.

6 As a condition for obtaining habeas corpus from a federal court, a state prisoner must show  
7 that the state court's ruling on the claim being presented in federal court was so lacking in  
8 justification that there was an error well understood and comprehended in existing law  
9 beyond any possibility for fairminded disagreement.

9 Id., at 786-87.

10 Ground 1 contains claims of ineffective assistance of counsel. "[T]he right to counsel is the  
11 right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 & n.14  
12 (1970). A petitioner claiming ineffective assistance of counsel must demonstrate (1) that the  
13 defense attorney's representation "fell below an objective standard of reasonableness," Strickland v.  
14 Washington, 466 U.S. 668, 688 (1984), and (2) that the attorney's deficient performance prejudiced  
15 the defendant such that "there is a reasonable probability that, but for counsel's unprofessional  
16 errors, the result of the proceeding would have been different," id. at 694. "[T]here is no reason for  
17 a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to  
18 address both components of the inquiry if the defendant makes an insufficient showing on one." Id.  
19 at 697.

20 Strickland expressly declines to articulate specific guidelines for attorney performance  
21 beyond generalized duties, including the duty of loyalty, the duty to avoid conflicts of interest, the  
22 duty to advocate the defendant's cause, and the duty to communicate with the client over the course  
23 of the prosecution. 466 U.S. at 688. The Court avoided defining defense counsel's duties so  
24 exhaustively as to give rise to a "checklist for judicial evaluation of attorney performance. . . . Any  
25 such set of rules would interfere with the constitutionally protected independence of counsel and  
26 restrict the wide latitude counsel must have in making tactical decisions." Id. at 688-89.

27 Review of an attorney's performance must be "highly deferential," and must adopt counsel's  
28 perspective at the time of the challenged conduct to avoid the "distorting effects of hindsight."

1 Strickland, 466 U.S. at 689. A reviewing court must “indulge a strong presumption that counsel’s  
2 conduct falls within the wide range of reasonable professional assistance; that is, the defendant must  
3 overcome the presumption that, under the circumstances, the challenged action ‘might be considered  
4 sound trial strategy.’” Id. (citation omitted).

5 The Sixth Amendment does not guarantee effective counsel per se, but rather a fair  
6 proceeding with a reliable outcome. See Strickland, 466 U.S. at 691-92. See also Jennings v.  
7 Woodford, 290 F.3d 1006, 1012 (9th Cir. 2002). Consequently, a demonstration that counsel fell  
8 below an objective standard of reasonableness alone is insufficient to warrant a finding of  
9 ineffective assistance. The petitioner must also show that the attorney’s sub-par performance  
10 prejudiced the defense. Strickland, 466 U.S. at 691-92. There must be a reasonable probability that,  
11 but for the attorney’s challenged conduct, the result of the proceeding in question would have been  
12 different. Id. at 694. “A reasonable probability is a probability sufficient to undermine confidence  
13 in the outcome.” Id.

14 Establishing that a state court’s application of Strickland was unreasonable under § 2254(d)  
15 is all the more difficult. The standards created by Strickland and § 2254(d) are both “highly  
16 deferential,” . . . and when the two apply in tandem, review is “doubly” so . . . . The  
17 Strickland standard is a general one, so the range of reasonable applications is substantial.  
18 Federal habeas courts must guard against the danger of equating unreasonableness under  
19 Strickland with unreasonableness under § 2254(d). When § 2254(d) applies, the question is  
20 not whether counsel’s actions were reasonable. The question is whether there is any  
21 reasonable argument that counsel satisfied Strickland’s deferential standard.

19 Harrington v. Richter, 131 S. Ct. 770, 788 (2011) (citations omitted).

20 Ground 1(a) is a claim that petitioner was not provided counsel during his interview with  
21 state investigators. This does not appear to be a claim of ineffective assistance of counsel. The  
22 interview occurred before petitioner was charged with the crimes at issue in this case. The Sixth  
23 Amendment’s guarantee of counsel, and effective assistance of counsel, is offense-specific and does  
24 not accrue until the formal commencement of criminal charges against petitioner. Kirby v. Illinois,  
25 406 U.S. 682, 689 (1972) (plurality opinion). Ground 1(a) appears to be a claim that the  
26 investigators violated Miranda v. Arizona, 384 U.S. 436 (1966), because they did not advise  
27 petitioner of his rights before interrogating him. This is a claim of a constitutional violation that  
28 occurred before petitioner entered his guilty plea.

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in McMann.

Tollett v. Henderson, 411 U.S. 258, 267 (1973). Ground 1(a) is not a claim that the plea was unknowing and involuntary, and it appears not to be a claim that the Sixth Amendment right to counsel was violated. Therefore, it would be barred by Tollett v. Henderson.

Even if ground 1(a) was a claim of ineffective assistance of counsel, it is without merit. The Nevada Supreme Court did consider an ineffective-assistance claim related to the interrogation. Petitioner raises the same claim in ground 5(c) of the second amended petition. The Nevada Supreme Court held:

Sixth, appellant claimed that trial counsel was ineffective for failing to file a motion to suppress his confession and evidence found because of that confession and claimed that had trial counsel filed the motion he would not have pleaded guilty. Appellant was on parole and the confession arose out of two polygraph examinations and subsequent interviews. Appellant claims that he should have been given Miranda v. Arizona, 384 U.S. 436 (1966), warnings because these were custodial interrogations. Contrary to appellant's assertion, the United States Supreme Court has stated that interviews with probation officers are not custodial, and therefore, Miranda does not apply. See Minnesota v. Murphy, 465 U.S. 420, 430-32 (1984). It can be extrapolated that the same law applies to parole officers as they function similarly to probation officers. Accordingly, appellant failed to demonstrate that this motion had a reasonable probability of success because he failed to demonstrate that the confession should have been suppressed. Therefore, the district court did not err in denying this claim.

Ex. 15, at 3-4 (#16) (footnote omitted). Petitioner quotes a treatise, which in turn cites two cases from state courts, for the proposition that parole officers must give Miranda warnings. See People v. English, 534 N.E.2d 1195 (N.Y. 1989); State v. Willis, 825 P.2d 357 (Wash. App. 1992). These cases are distinguishable for two reasons. First, unlike petitioner, the defendants in those cases were in jail, and undoubtedly in custody when questioned by parole officers. Second, this court's review is limited to determining whether the Nevada Supreme Court's ruling is contrary to, or an unreasonable application of, decisions of the Supreme Court of the United States. See 28 U.S.C. § 2254(d). Decisions of other state courts might be persuasive, but they do not determine whether a different decision from the Nevada Supreme Court is unreasonable. As the Nevada Supreme Court noted, Murphy held that the obligation to appear before a probation officer does not amount to

1 custody within Miranda's meaning of the term, and thus the protections of Miranda do not apply.  
2 465 U.S. at 430-32. The only distinction between Murphy and petitioner's case is that petitioner  
3 was on parole, not probation, but given the functional equivalence of those two statuses, the Nevada  
4 Supreme Court reasonably could have extended Murphy to petitioner's case. Furthermore, the  
5 Nevada Supreme Court reasonably could have concluded that the lack of a motion to suppress was  
6 not deficient performance by counsel, because Miranda was inapplicable to petitioner's situation.  
7 Grounds 1(a) and 5(c) are without merit.

8 In ground 1(b), petitioner claims that he was without counsel for one and a half months  
9 during the arraignment and preliminary proceedings of his case. Respondents note that petitioner  
10 was appointed counsel at his initial appearance before a justice of the peace, and petitioner concedes  
11 the point. Ground 1(b) is without merit.

12 In ground 1(c), petitioner alleges that he asked his counsel about Miranda issues, and that  
13 counsel lied, stating that parole officers did not have to adhere to Miranda. Counsel was correct, for  
14 the reasons stated in the court's discussion of ground 1(a), above. Ground 1(c) is without merit.

15 In ground 1(e), petitioner claims that counsel failed to follow petitioner's directions to move  
16 to withdraw his guilty plea. Petitioner refers to exhibits C-3, D-2, and H-3 of the second amended  
17 petition's exhibit 2 (#9). In the supporting memorandum to his state habeas corpus petition,  
18 petitioner cites to those exhibits in support of the fact that the prosecution lost contact with the  
19 victim before petitioner was sentenced. Ex. 11, at 19 (#16). On this issue, the Nevada Supreme  
20 Court held:

21 Fourth, appellant claimed that trial counsel was ineffective for ignoring information  
22 discovered after the guilty plea agreement was signed that the State lost contact with the  
23 victim. Appellant failed to demonstrate that trial counsel's performance was deficient.  
24 Once appellant signed the guilty plea agreement and admitted to the facts of the charged  
conduct, the victim's presence was no longer necessary. Therefore, the district court did not  
err in denying this claim.

25 Ex. 15, at 3 (#16). In pleading guilty, petitioner waived his constitutional right to confront and  
26 cross-examine any witnesses who would have testified against him. Ex. 5, at 4 (#16). Having  
27 released the prosecution from the obligation to prove its case, petitioner cannot then turn around and  
28 argue that the prosecution is unable to prove its case. The Nevada Supreme Court applied

1 Strickland reasonably in holding that counsel did not perform deficiently by not filing a motion to  
2 withdraw the plea based upon the disappearance of the victim.

3 In ground 1(h), petitioner claims that counsel failed to maintain contact with petitioner. On  
4 this issue, the Nevada Supreme Court held:

5 First, appellant claimed that trial counsel was ineffective for not contacting appellant  
6 between the arraignment and the preliminary hearing. Appellant failed to demonstrate that  
7 he was prejudiced. Appellant failed to demonstrate a reasonable probability that he would  
not have pleaded guilty and insisted on going to trial had counsel met with him more  
frequently. Therefore, the district court did not err in denying this claim.

8 Ex. 15, at 2 (#16). The state petition contained no evidence that the lack of communication caused  
9 petitioner to plead guilty, and thus the Nevada Supreme Court's decision was a reasonable  
10 application of Strickland.

11 Petitioner argues in the reply that he actually was referring to the time between his plea of  
12 guilty, January 18, 2008, and the sentencing hearing, April 8, 2008, when he was trying to tell his  
13 attorney to move to withdraw the guilty plea because the prosecution had lost contact with the  
14 victim. Reply, at 5 (#34). To that extent, ground 1(h) is redundant to ground 1(e), and it is without  
15 merit for the same reasons.

16 In ground 1(i), petitioner claims that counsel failed to inform him about a direct appeal. The  
17 analysis of whether a defendant was denied a direct appeal due to ineffective assistance of counsel  
18 has four steps. First, has the defendant instructed counsel to file an appeal or asked not to take an  
19 appeal?

20 [A] lawyer who disregards specific instructions from the defendant to file a notice of appeal  
21 acts in a manner that is professionally unreasonable. . . . At the other end of the spectrum, a  
22 defendant who explicitly tells his attorney not to file an appeal plainly cannot later complain  
that, by following his instructions, his counsel performed deficiently.

23 Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000). Second, if the defendant did not give instructions,  
24 has counsel consulted with the defendant about a direct appeal?

25 We employ the term "consult" to convey a specific meaning-advising the defendant about  
26 the advantages and disadvantages of taking an appeal, and making a reasonable effort to  
27 discover the defendant's wishes. If counsel has consulted with the defendant, the question of  
28 deficient performance is easily answered: Counsel performs in a professionally unreasonable  
manner only by failing to follow the defendant's express instructions with respect to an  
appeal.



1 Id. at 478 (emphasis added). Third, if counsel did not consult with the defendant about the direct  
2 appeal, was that deficient performance by counsel?

3 [C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal  
4 when there is reason to think either (1) that a rational defendant would want to appeal (for  
5 example, because there are nonfrivolous grounds for appeal), or (2) that this particular  
6 defendant reasonably demonstrated to counsel that he was interested in appealing. In making  
7 this determination, courts must take into account all the information counsel knew or should  
8 have known.

9 Id. at 480 (citation omitted). Fourth, if the lack of consultation was deficient performance, was the  
10 defendant prejudiced? “[T]o show prejudice in these circumstances, a defendant must demonstrate  
11 that there is a reasonable probability that, but for counsel’s deficient failure to consult with him  
12 about an appeal, he would have timely appealed.” Id. at 484.

13 Petitioner presented this ground to the Nevada Supreme Court in a supplemental brief in the  
14 appeal from the denial of his state habeas corpus petition. Opposition, Ex. E, at 2 (#18). The  
15 Nevada Supreme Court disposed of the ground summarily. Ex. 15, at 4 n.4 (#16). This court  
16 presumes that the Nevada Supreme Court considered the matter on the merits. Johnson v. Williams,  
17 133 S. Ct. 1088, 1094 (2013).

18 The court can answer the first two steps of the Flores-Ortega analysis promptly. Petitioner  
19 did not instruct counsel to file a direct appeal, and counsel did not consult with petitioner about a  
20 direct appeal. The question is whether the lack of consultation was deficient performance. In the  
21 supplemental brief filed with the Nevada Supreme Court, petitioner cited to pages 15-20 of the  
22 memorandum supporting his state habeas corpus petition, which is exhibit 11 to respondents’  
23 motion to dismiss (#16). On those pages, petitioner argues three issues that counsel should have  
24 argued: Miranda, the prosecution’s loss of contact with the victim, and the gender of the trial judge  
25 as a reason for recusal. None of these were non-frivolous grounds for appeal. The court has already  
26 discussed the first two issues. As for the gender of the judge, petitioner never alleged in state court  
27 any instances of bias on the part of the judge. Therefore, the Nevada Supreme Court reasonably  
28 could have concluded that the lack of consultation about a direct appeal was not deficient  
performance by counsel. Ground 1(i) is without merit.



1 In ground 2, petitioner claims that he was subject to illegal search and seizure in violation of  
2 the Fourth Amendment. In ground 2(a), he argues that his parole officer ordered him to the parole  
3 office, where he was not allowed to leave. While there, he was questioned by a detective, and that  
4 questioning led to petitioner being charged. In ground 2(b), petitioner argues that his parole officer  
5 detained his sister in her home for three hours and coerced her into cooperating with law  
6 enforcement. Ground 2 has two fatal defects. First, the claims in ground 2 are claims of  
7 constitutional violations that occurred before entry of the plea, and thus the guilty plea bars  
8 consideration of the claims. Henderson, 411 U.S. at 267. Second, the state courts provided  
9 petitioner with a full and fair opportunity to litigate these claims in state court; petitioner cannot  
10 litigate them in federal habeas corpus. Stone v. Powell, 428 U.S. 465 (1976). Ground 2 is without  
11 merit.

12 Ground 3 contains the following claims of violations of petitioner's Fifth Amendment rights:  
13 (a) state investigators used hostile and abusive language during the interview; (b) state investigators  
14 failed to provide petitioner with Miranda warnings prior to polygraph sessions; (c) petitioner was  
15 intimidated psychologically and physically by the detectives; (d) parole and probation officers failed  
16 to acknowledge and account for petitioner's medical conditions; and (e) detectives "overbore  
17 Petitioner's will and manipulated a false, inadmissible confession." All the claims in ground 3 are  
18 claims of constitutional violations that occurred before entry of the plea, and thus the guilty plea  
19 bars consideration of the claims. Henderson, 411 U.S. at 267. Ground 3 is without merit.

20 In ground 4(c), petitioner claims that the special sentence of lifetime supervision violates the  
21 Eighth Amendment because it is a "second successive sentence to the 2 to 20 years for the same  
22 offense with the same requirements of proof." Petitioner presented this claim to the Nevada  
23 Supreme Court in his supporting memorandum to his state habeas corpus petition. Ex. 11, at 21-22  
24 (#16). The Nevada Supreme Court determined that the claim was not permissible under Nev. Rev.  
25 Stat. § 34.810(1)(a). Ex. 15, at 1 n.2 (#16). The court of appeals has held in the federal criminal  
26 system that a sentence of lifetime supervised release for a sex offender does not violate the Eighth  
27 Amendment. United States v. Williams, 636 F.3d 1229 (9th Cir. 2011). The conditions of  
28 supervised release imposed in that case are similar to the conditions of lifetime supervision required

1 by Nevada law. Compare Williams, 636 F.3d at 1231-32, with Nev. Rev. Stat. § 213.1243. The  
2 court sees no reason why the holding of Williams should not be extended to Nevada's special  
3 sentence of lifetime supervision.

4       Petitioner also claims in ground 4(c) that a prison sentence and the sentence of lifetime  
5 supervision for the same crime, attempted lewdness with a child under the age of 14, violates the  
6 Double Jeopardy Clause of the Fifth Amendment. The Nevada Legislature specifically authorized  
7 cumulative punishment of lifetime supervision along with other penalties for sexual offenses. "If a  
8 defendant is convicted of a sexual offense, the court shall include in sentencing, in addition to any  
9 other penalties provided by law, a special sentence of lifetime supervision." Nev. Rev. Stat. §  
10 176.0931(1) (emphasis added). Because the Nevada Legislature has specifically authorized  
11 cumulative punishment, there is no violation of the Double Jeopardy Clause. Missouri v. Hunter,  
12 459 U.S. 359, 368-69 (1983). Ground 4(c) is without merit.

13       In ground 5(a), petitioner claims that the special sentence of lifetime supervision violates the  
14 Equal Protection Clause of the Fourteenth Amendment because it applies only to sex offenders.

15       The Equal Protection Clause does not forbid classifications. It simply keeps governmental  
16 decisionmakers from treating differently persons who are in all relevant respects alike.

17 Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). Petitioner argues that arsonists, murderers, and other  
18 criminals are not subject to the special sentence of lifetime supervision. However, those are  
19 different types of crimes than the sexual offense for which petitioner was convicted. On the other  
20 hand, Nevada does require people convicted of a large range of sexual offenses, not just attempted  
21 lewdness, to receive the special sentence of lifetime supervision. Nev. Rev. Stat. § 176.0931(5)(c)  
22 (defining "sexual offense"). In the most relevant respect, petitioner is treated no differently than any  
23 other person who is convicted of a sexual offense. Ground 5(a) is without merit.

24       In ground 5(b), petitioner claims that the abusive treatment of the detective who interviewed  
25 him violates the Due Process Clause of the Fourteenth Amendment. This is a claim of a  
26 constitutional violation that occurred before the entry of his plea, and thus the guilty plea bars  
27 consideration of the claim. Henderson, 411 U.S. at 267.

1 The court considered ground 5(c), a claim that counsel failed to file a motion to suppress  
2 because of a Miranda violation, along with ground 1(a), above.

3 In ground 5(d), petitioner claims that the Due Process Clause of the Fourteenth Amendment  
4 was violated because he was not provided a copy of the pre-sentence investigation report. Nevada  
5 law requires the pre-sentence investigation report be disclosed to the prosecutor, the defense  
6 counsel, and the defendant. Nev. Rev. Stat. § 176.156(1).<sup>2</sup> First, “[a] federal court may not issue  
7 the writ on the basis of a perceived error of state law.” Pulley v. Harris, 465 U.S. 37, 41 (1984).  
8 Second, the Due Process Clause does not require disclosure of the pre-sentence investigation report.  
9 Williams v. New York, 337 U.S. 241, 249-51 (1949). See also United States v. Coletta, 682 F.2d  
10 820, 827 (9th Cir. 1982). Ground 5(d) is without merit.

11 Grounds 6(g) and 6(h) are claims of violations of the Racketeer Influenced and Corrupt  
12 Organizations (RICO) Act, 18 U.S.C. § 1961 et seq. A person may bring a civil claim pursuant to  
13 18 U.S.C. § 1964(c). The elements are: “(1) conduct (2) of an enterprise (3) through a pattern (4) of  
14 racketeering activity (known as ‘predicate acts’) (5) causing injury to the plaintiff’s ‘business or  
15 property.’” Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996). In ground 6(g), petitioner claims  
16 that because the judge, prosecutor, and officers were all female, they must have conspired against  
17 him. In ground 6(h), petitioner claims that lifetime supervision means that he will be under constant  
18 threat of false accusation, abuse, and prosecution. Petitioner has not alleged, let alone provided  
19 evidence, that these people have engaged in a “racketeering activity” as defined in 18 U.S.C.  
20 § 1961(a). Petitioner also has not alleged, let alone provide evidence, that these people have injured  
21 his business or his property. Grounds 6(g) and 6(h) are without merit.

22 Reasonable jurists would not find the court’s conclusions to be debatable or wrong, and the  
23 court will not issue a certificate of appealability.

24 Also before the court are petitioner’s additional points and authorities (#35), respondents’  
25 motion to strike (#36), and petitioner’s response to the motion to strike (#37). The additional points  
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28 <sup>2</sup>Petitioner cites to Rule 32(e)(2) of the Federal Rules of Criminal Procedure, but that rule is  
inapplicable to criminal prosecutions in state court.

1 and authorities are not authorized by Local Rule 7-2, and petitioner did not seek leave of the court to  
2 file them. The court grants respondents' motion.

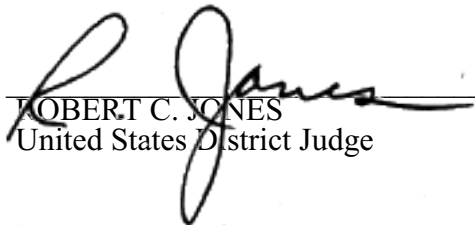
3 IT IS THEREFORE ORDERED that respondents' motion to strike (#36) is **GRANTED**.  
4 The clerk of the court shall **STRIKE** petitioner's additional points and authorities (#35).

5 IT IS FURTHER ORDERED that the second amended petition for a writ of habeas corpus  
6 (#9) is **DENIED**. The clerk of the court shall enter judgment accordingly.

7 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

8 Dated: April 15, 2014.

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ROBERT C. JONES  
United States District Judge